IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 11040 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.C.SRIVASTAVA sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

SHARADKUMAR L PANDYA

Versus

ONGC LTD

Appearance:

MR TR MISHRA for Petitioners

MR RAJNI H MEHTA for Respondent No. 1

MR YH VYAS for Respondent No. 2

CORAM : MR.JUSTICE D.C.SRIVASTAVA

Date of decision: 11/06/2001

C.A.V. JUDGEMENT

1. Notices have been served on the respondents, but none appeared on behalf of the respondent No.3 - Chief Labour Commissioner (Central). Shri Rajni H. Mehta

appeared for the respondent No.1 - Oil & Natural Gas Corporation Ltd. None appeared for respondent No.2 though counter Affidavit has been filed on behalf of this respondent. Counter Affidavit has also been filed on behalf of respondent No.1.

2. Shri T.R.Mishra, learned Counsel for the petitioner and Shri Rajni H. Mehta, learned Counsel for the respondent were heard on admission of this writ petition.

3. After hearing the detailed arguments of Shri T.R.Mishra and Shri Rajni H. Mehta, learned Counsel for the petitioner and the respondent No.1 respectively and after examining the Affidavits, counter Affidavits and series of documents filed by the petitioners and the respondent No.1, I have no hesitation in making prima facie observation that disputed questions of fact are involved in this writ petition which require evidence. Consequently in exercise of jurisdiction under Article 226 of the Constitution of India it is not possible for this Court to decide the disputed questions of fact. There is alternative forum and there is also equally efficacious remedy under the Industrial Disputes Act and such disputed questions of fact can conveniently and effectively be decided by the alternative forum. As such this preliminary objection of Shri Rajni H. Mehta, Counsel for the respondent No.1 has to be accepted.

4. The petitioners alleged that they are direct employees of the respondent No.1 and are working as Technician (Instrumentation Electronics) and that if in the alternative they are considered to be direct labours of respondent No.2 then also in view of Notification dated 8.9.1994 from the Ministry of Labour the petitioners fall within the prohibited category at Sr.No.9, viz. as Telecom Operators and as such after prohibition of employment of contract labour in view of Section 10 of the Contract Labour (Regulation & Abolition) Act 1970, the petitioners have become direct employees of the respondent No.1. The petitioners learnt that under some internal circular issued by the respondent No.1 their services are proposed to be terminated and as such they have filed this petition.

5. The prayers in the petition are firstly for issuing writ of mandamus holding that the petitioners are deemed to be the direct employee of the respondent No.1 and direction be issued to the respondent No.1 to grant time scale of pay and other perks and perquisites at par with regular employees of the respondent No.1.

Alternative prayer is that the respondent No.3 be directed to investigate and submit a report to this Court about the nature of job being performed by the petitioners as mentioned in the writ petition. Interim relief was sought that the respondent be restrained from discontinuing, discharging or dismissing the services of the petitioners and effecting any change to the nature of the job performed by the petitioners.

6. Shri T.R.Mishra, learned Counsel for the petitioner admitted that disputed questions of facts are involved in this petition which may not be decided by the High Court in exercise of jurisdiction under Article 226 of the Constitution of India. He therefore suggested that the petitioners be directed to approach the alternative forum for redressal of their grievances and in the mean time interest of the petitioners be protected. Other model orders passed by this Court in various writ petition were also brought to my notice.

7. Once it is found that disputed questions of fact are involved in the writ petition it would not be possible for this Court, in exercise of jurisdiction under Article 226 of the Constitution of India, to decide such questions. However, the main question is whether the petitioners are protected in view of notification of 8.9.1994. Under this notification at Sr.No.9 one of the prohibited category of employment is of telecom operators. If, therefore, the petitioners are prima facie able to show that they were appointed as telecom operators either by the respondent No.1 or by the respondent No.2 the relief can be granted under Article 226 of the Constitution of India inasmuch as no detailed enquiry into facts is required and on prima facie satisfaction that the petitioners were appointed as telecom operators effect of notification of 8.9.1994 can be seen and can be directly applied. However, on the material brought on record the petitioners have miserably failed in satisfying prima facie that they were appointed by the O.N.G.C. the respondent No.1, as its direct employees. No appointment letter from O.N.G.C. has been produced nor it is coming on record that the petitioners were appointed in accordance with the recruitment rules framed by the O.N.G.C. Indirect appointment can hardly be permissible. Evidently from the copy of Agreement filed with one of the counter Affidavits vide Annexure : X it appears that the respondent No.2 was engaged as contractor and terms of Agreement are contained therein. There is specific denial in the two counter Affidavits filed on behalf of the respondent No.1 that the petitioners were never appointed as direct employees of

the respondent No.1. On the other hand the stand is that they were appointed by the contractor, the respondent No.2, and it was purely a contractual job.

8. As against this Shri T.R.Mishra has referred to Pages 19 to 23 of the compilation. Bio-data at page : 19 does not indicate to whom this was addressed and what was was the job applied for by one of the petitioners S.K.L. Pandya. In Col.No.10 it is mentioned that this petitioner was working in O.N.G.C. as Telecommunication Operator at Cambay Project, but no appointment letter from the O.N.G.C. has been filed nor any other document could be filed to show that he was appointed by the respondent No.1. Bio-data of R.G.Rathod at Page : 20 & 21 shows that he was working as Telecom Operator through respondent No.2. This recital is found at Page No.21. This, therefore, negatives the contention that he was appointed by the Corporation. On the other hand, it supports the respondent No.1 that this petitioner was working through the contractor, respondent No.2. Similar is the case with K.M.Dafda, whose bio-data at Page : 22 contains similar recital that he was working through the respondent No.2. The Bio-data of K.M.Parmar, another petitioner also shows that he was working at Cambay Project of O.N.G.C. through the respondent No.2. In face of this admission of these petitioners no weight can be attached to the counter Affidavit of the contractor, respondent No.2. Shri Mishra has placed much reliance upon this Affidavit of Shri D.A.Patel, wherein it is mentioned that the society, respondent No.2, is mere mediator to receive wages which in turn is paid to the petitioners. It is also deposed that the society simply makes payment to the petitioners and does not have any control over the petitioners. This Affidavit is in several folds that it seems that it was sent from Cambay by post. The Advocate, who explained and interpreted the contents of the Affidavit in Gujarati, has not signed it nor his name is disclosed. This Affidavit was sworn at Cambay on 12.12.2000 whereas the contract of this respondent was to come to an end on 31.12.2000. The Affidavit become further suspicious because the Advocate who represented the respondent No.2 never appeared either to contest the petition at the admission stage or to support the petitioner. Consequently this Affidavit does not prima facie furnish evidence that the petitioners are direct employees of the respondent No.1. Moreover this Counter Affidavit is contrary to the terms of Agreement between the respondents No.1 & 2 whose copy is annexed at Annexure:X. On the face of it, it does not appear reasonable and probable that the O.N.G.C. could have employed respondent No.2 simply for making payment of

salary, wages, Bonus and other monetary benefits to the petitioners. If the petitioners were under control of the respondent No.1 there was no prohibition before the respondent No.1 in making payment to the petitioners. The documents brought on record by Shri Mishra also do not indicate in any way that the petitioners are direct employees of the respondent No.1 or they were engaged by the contractor under the prohibited category. Consequently prima facie the petitioners having failed to establish that they fall within the prohibited category are not entitled to any relief from this Court in this petition.

9. Shri T.R.Mishra has referred to various orders of this Court and requested that similar order be passed in this petition directing the petitioners to approach alternative forum and till the matter is decided their interest may be protected. It may be mentioned at the out-set that if the petition under Article 226 of the Constitution of India is not maintainable there is no question of granting any interim relief. The petitions are not filed or entertained simply for granting interim relief. Moreover the orders which have been referred by Shri Mishra cannot be applied to the facts of the case inasmuch as Shri Rajni H. Mehta, learned Counsel for the respondent No.1 was not agreeable for such order.

10. The order passed in Special Civil Application No.8090 of 1999 (Annexure : B) decided on 16.2.2000 is based on consent of the learned Counsel for the parties. Since Shri Mehta is not consenting party such direction as contained in Annexure : B cannot be given. Annexure : C is another order dated 5.4.2000 passed in Special Civil Application No.520 of 2000. In Para : 2 of this order it is clearly mentioned that both the learned Advocates have agreed that the order be passed in terms of order made in Special Civil Application No.5433 of 1999, etc. Thus, this was an order with the consent of the parties concerned. Order at Annexure : A does not indicate whether it was an order passed with consent. However, in this case it was mentioned that if the directions are given without prejudice to the rights and contentions of the parties that would, in the opinion of the court, serve the ends of justice. This also does not take me any where whether the merits of the case were considered and whether the respondent's counsel was consenting party. Similar are the orders in Annexures : F & G where directions were given so as to meet the ends of justice. If the parties are agreeable such direction could be given, but not that when one of the respondent is not agreeable. The ends of justice would, therefore,

not be served if orders are passed against the stand taken by one of the respondents.

11. In the result, I find that the writ petition is not maintainable and it is liable to be dismissed which is hereby dismissed. No order as to costs.

sd/-

Date : June 11, 2001 (D. C. Srivastava, J.)

sas

At this stage Shri T.R.Mishra has requested for time to file Appeal and till orders are obtained from the Appellate Court, interim relief granted by this Court may be extended. The request is declined for the reason that it is opposed by Shri Mehta, Counsel for the respondent No.1, and Shri Mehta also made a statement on 15.12.2000 that the existing contract is coming to an end on 31.12.2000, but in all probabilities the contract of the said contractor is likely to be extended or otherwise if new contract is given then also the O.N.G.C. will ask the new contractor to continue present petitioners. In view of this statement also interim relief is not to be extended.

sd/-

Date : June 11, 2001 (D. C. Srivastava, J.)

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